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**COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF PLANNING AND BUILDING  
STAFF REPORT**

**SUBDIVISION REVIEW BOARD**

MEETING DATE June 1, 2015	CONTACT/PHONE Jo Manson (805) 781-4660 jmanson@co.slo.ca.us	APPLICANT Loren Milburn and Guy Howe	FILE NO. C15-0020 SUB2014-00046
SUBJECT Request by Loren Milburn and Guy Howe for one (1) Conditional Certificate of Compliance (C15-0020) to legalize one (1) parcel of approximately 23 acres. The proposed project is within the Rural Lands land use category and is located at 2365 Parkhill Road, approximately 1.2 miles east of the intersection of Las Pilitas Road and Parkhill Road, east of the community of Santa Margarita. The site is in the Las Pilitas Sub Area in the North County planning area.			
RECOMMENDED ACTION 1. Approve Conditional Certificate of Compliance C15-0020 authorizing the issuance of one (1) conditional certificate of compliance based on the findings listed in Exhibit A and the conditions listed in Exhibit B.			
ENVIRONMENTAL DETERMINATION This project is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that this project may have a significant effect on the environment; therefore, the activity is exempt from and not subject to CEQA. [Reference: State CEQA Guidelines sec. 15061(b)(3), General Rule Exemption].			
LAND USE CATEGORY Rural Lands	COMBINING DESIGNATION None	ASSESSOR PARCEL NUMBER 071-041-023	SUPERVISOR DISTRICT(S): 5
PLANNING AREA STANDARDS: None applicable			
LAND USE ORDINANCE STANDARDS: Chapter 22.12, "U" Unclassified Districts, Title 22, 1970			
EXISTING USES: Undeveloped			
SURROUNDING LAND USE CATEGORIES AND USES: North: Rural Lands / single family residence      East: Rural Lands / single family residence South: Rural Lands / undeveloped, grazing      West: Rural Lands / undeveloped			
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Public Works, Cal Fire, Santa Margarita Area Advisory Council			
TOPOGRAPHY: Level to moderately sloping.		VEGETATION: California annual grassland, shrubs	
PROPOSED SERVICES: Water supply: On site well. Sewage Disposal: Individual septic system Fire Protection: CalFire		ACCEPTANCE DATE: April 16, 2015	
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER γ SAN LUIS OBISPO γ CALIFORNIA 93408 γ (805) 781-5600 γ FAX: (805) 781-1242			

## PROJECT HISTORY:

Under the Subdivision Map Act (Section 66499.35) and the County's Real Property Division Ordinance (Section 21.02.020), any person owning real property or a vendee may request that the County make a determination of compliance with the Subdivision Map Act and the County's Real Property Division Ordinance. If the County determines the real property is a legally created parcel, it is required to issue and record an (unconditional) certificate of compliance. If the County determines the real property is not legally created in compliance with the Subdivision Map Act and the County's Real Property Division Ordinance, it is then required to issue and record a conditional certificate of compliance. The County may, as a condition to granting a conditional certificate of compliance, impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest therein.

The applicant is requesting one (1) conditional certificate of compliance for an approximate 23 acre parcel that is a portion of Parcel 1 of Parcel Map CO72-152 which was recorded on August 25, 1972 in Book 9, Page 40 of Parcel Maps.

The original legal parcel, Parcel 1 of Parcel Map CO 72-152, was approximately 41.8 acres. Parcel 1 included APN: 071-041-023 (subject parcel) and APN: 071-041-024. Based upon a parcel size of approximately 23 acres, a pre-1966 deed would establish the legality of that parcel if the parcel had been conveyed by deed separately from surrounding land prior to February 17, 1966. There is not a pre-1966 deed for this specific parcel which deeded it separately from surrounding land; APN: 071-041-024 was first deeded out separately on February 5, 1975 (1817 OR 230). This conveyance left the subject property, APN: 071-041-023, as an illegal remainder.

Based upon the approximate 23 acre parcel size, the parcel size was a violation of the County's Lot Division Ordinance and State Subdivision Map Act because lots of more than 3 acres but less than 40 acres could not be created after February 17, 1966 without first having a subdivision approved by the County Subdivision Review Board (SRB). A map was required to be approved to create parcels after February 17, 1966. The subject parcel was an illegal subdivision by deed conveyance and a conditional certificate of compliance is required.

Applicable deed history is as follows:

### **August 25, 1972 – Book 9, Page 40 of Parcel Maps**

Parcel Map CO 72-152. Includes APNs: 071-041-023 (subject property) and 071-041-024 which together are Parcel 1 of Parcel Map CO 72-152. It also included APN: 071-041-019 which is Parcel 2 of Parcel Map CO 72-152.

### **February 5, 1975 – 1817 OR 230 recorded February 6, 1975**

Joint Tenancy Grant Deed from Keith W. Milburn, a single man to Dennis E. Milburn and Deborah Ann Milburn, husband and wife as joint tenants. APN: 071-041-024. This was a violation of the County's Lot Division Ordinance and State Subdivision Map Act because parcels more than three acres but less than forty acres could not be created after February 17, 1966 (Lot Division Ordinance) without first having a subdivision approved by the County Subdivision Review Board. A map was required to be approved to create parcels at that time, therefore the parcel was not legally created and the subject parcel was left as an illegal remainder.

**March 24, 1975 – 1825 OR 544 recorded March 27, 1975**

Grant Deed from Keith W. Milburn, a single man to Loren L. Milburn, a single man, as his sole and separate property. APN: 071-041-023 (subject property). This property is an illegal remainder per deed 1817 OR 230 as noted above.

**August 4, 2014 – Document #2014-031898 recorded August 7, 2014**

Grant Deed from Loren L. Milburn to Loren L. Milburn and Guy Willian Howe, Registered Domestic Partners. APN: 071-041-023 (subject property).

**ORDINANCE COMPLIANCE:**

This request is to legalize an approximate 23 acre parcel that was left as an illegal remainder in 1975. Pursuant to the Subdivision Map Act, the parcel should comply with the subdivision standards in effect on March 24, 1975 as that is the date that the applicant acquired his interest in the property (Volume 1825 of Official Records, Page 544).

*Minimum Parcel Size*

The subdivision standards in effect on March 24, 1975 are referenced in Chapter 22.12, "U" (Unclassified) Districts, Title 22, 1970. The zoning designation for the subject parcel was "U". Section 22.12.040, Building Site Area, specifies that the minimum parcel size was 10 acres. The proposed parcel meets the required minimum parcel size based on the zoning designation.

*Quimby Fees*

Title 21, the Real Property Division Ordinance, establishes an in-lieu fee for all new land divisions for the purpose of developing new, or rehabilitating existing, park or recreational facilities to serve the land division. Payment of the parkland fee for all undeveloped parcels is normally required prior to conditional certificate of compliance recordation. However, this fee was not established until 1993. The applicant acquired his interest in the property on March 24, 1975 (1825 OR 544). Therefore, this project is not subject to payment of this fee.

*Inclusionary Housing Fees*

Title 29, the Affordable Housing Fund, establishes an in-lieu fee to create a fund that would help to meet, in part, the housing needs of the County's very low, low, moderate income and workforce households. This fee was not established until 2008 when Title 22, Land Use Ordinance, was adopted by the Board of Supervisors (Ordinance No. 3169) and Title 29, Affordable Housing Fund Ordinance, was adopted by the Board of Supervisors (Ordinance No. 3171). Therefore, this project is not subject to payment of this fee. In addition, affordable housing fees were not established until 1991 when Title 18, Public Facilities Fees Ordinance, was adopted by the Board of Supervisors (Ordinance No. 2519). Therefore, this project is not subject to payment of this fee.

**STAFF COMMENTS:**

*Authority*

Within the Subdivision Map Act, California Government Code Section 66499.35(b) describes the procedure for granting a Conditional Certificate of Compliance:

*"If a local agency determines that the real property does not comply with the provisions of [the Subdivision Map Act] or of local ordinances enacted pursuant to [the Subdivision Map Act], it **shall** issue a conditional certificate of compliance. A local agency **may**, as a condition to granting a conditional certificate of compliance, impose any conditions that*

*would have been applicable to the division of the property at the time the applicant acquired his or her interest therein..." [emphasis added by staff]*

In this case, staff has determined that an unconditional certificate of compliance cannot be granted because the illegal division creating the parcels by deed conveyance occurred at a time when a map would have been required. As such, the county is required to issue a conditional certificate of compliance. The above section goes on to describe the County's authority in conditioning the certificate.

#### AGENCY REVIEW:

Public Works – Recommends approval. All requirements will be established at time of application for future building improvements which will include encroachment, drainage, utility service, etc.

Cal Fire – No comment.

Santa Margarita Area Advisory Council – The Council reviewed the project at their April 1, 2015 meeting. Liaison Holly Phipps attended the meeting and noted that the Council had no concerns with the proposed project.

#### LEGAL LOT STATUS:

The one (1) parcel was illegally created by a deed conveyance at a time when that was not a legal method of creating parcels.

#### ATTACHMENTS

Attachment 1 - Findings – Exhibit A

Attachment 2 - Conditions – Exhibit B

Attachment 3 - Project Graphics

Attachment 4 - Project Referral Responses

Attachment 5 - Draft Conditional Certificate of Compliance

Report prepared by Jo Manson  
and reviewed by Terry Wahler, Senior Planner